

## **Appendix I: Transcript of Tribal Scoping Meeting - Williams, California, January 23, 2002**

**Tribal Scoping for  
North-of-the Delta Offstream Storage Investigation**  
Summary of January 23, 2002 meeting

Cortina Indian Rancheria Office

Williams, CA

**Participants**

**Department of Water Resources:**

B.G. Heiland	Sean Sou	Scott Woodland
Michiyo Sakamoto	Jim Wiekling	

**U.S. Bureau of Reclamation:**

Donna Garcia	Patricia Rivera	Jim West
Frank Perniciaro	Pat Welch	

**Bureau of Indian Affairs:**

Frank Fryman  
Douglas Garcia

**Bureau of Land Management:**

Julie Burcell

**Regional Solicitor's Office:**

Kaylee Allen

**Facilitator:**

Gwen Buchholz, CH2M Hill

**Attendees:**

Karen E. Flores	John Hancock	Ken Swearingen
Kesner Flores	Leslie Lohse	Howard Whipple, Jr.
Everett Freeman	Joe G. Pina	

**Introduction:** Kesner Flores, Director of the Wintun Environmental Protection Agency (WEPA) opened the meeting and indicated that this is the first time in his memory that a tribal scoping has been held.

Everett Freeman from the Paskenta Tribe led the group in an opening prayer. Flores mentioned that the presentation would be informational at first and we would then move into a formal presentation, that blue comment cards were available, and at the end of the formal comment period, questions would be entertained from the audience.

Gwen Buchholz of CH2M Hill opened the scoping meeting by stating that the North of the Delta Offstream Storage Project is a joint project under CALFED, DWR, and the U. S. Bureau of Reclamation. Following introductions, Buchholz stated that there was a short presentation and requested that comments be held until its completion. She stated that one of the main purposes of the meeting is to obtain comments on the types of alternatives and the issues we need to look at in the environmental documentation. Comments made at this meeting will be included in the scoping report that will be made available to everyone participating in the scoping process. For this reason, attendees were asked to ensure their names are on the mailing list.

Sean Sou (DWR) made a PowerPoint presentation on North of the Delta Offstream Storage. After the presentation, the meeting was opened for comments. The comment period will conclude on Friday, January 25, 2002.

Comments were recorded on an audio device and on flipcharts. Buchholz emphasized the importance of the comments and that they will help determine the issues we'll be addressing in the evaluation. The evaluation will include the specific needs, requests and concerns of residents in this geographical area.

Kesner Flores of Cortina Indian Rancheria introduced himself as a tribal member and environmental director of the Wintun Environmental Protection Agency. He stated that beyond the presentation, there are several things that need to be considered when working with tribes, and of utmost importance is that there must definitely be a working relationship between the government and the tribes.

Flores continued: Under the federal statutes concerning tribes and directives, and even the State of California, in regards to the resolution passed by Governor Davis, tribes need to be consulted with on a government-to-government relationship even more so now that federal dollars are actually in the system, because since we started this NEPA process under [Section] 106, they need to have the consultation. It is good for meetings like this to happen for tribes to share openly with each other, so we know what's being said across the table. Also, there're going to be times when each individual tribe needs to have consultation. The northern tribes, Shasta, even the northern band of Wintun, with the Winimum, their spiritual grounds are on Lake Shasta. Some of those lands were actually encumbered in that initial [?]. By raising it [the reservoir], they're going to lose some of their ceremonial areas. As a recognized tribe, we still go north to participate in those ceremonies, and there are people to contact, and we know their names. In the Oroville area, the tribes up there are very concerned. They're going through the appropriate licensing process with Oroville now, but they have concerns that need to be addressed, and they want that expressed.

In regards to Sites Reservoir, we have concerns. California tribes have never settled water rights, treaty rights, there've been no treaties ratified. Tribes have not given up their subsistence areas and still practice subsistence gathering and cultural practices that deal with the water, and we know because of court cases that this needs to be looked at. Traditional historical practices, especially when we get into quantification and quality of water. With that, Grindstone has some concerns in regards to some of the alternatives in regards to the Sites Reservoir. Sites Reservoir for our cultural area—we're concerned with quantification and quality as well as understanding that there might be a question of compensation to tribes for the water. Although the State might believe that it is State water, those things have never been settled, so we need to look at those issues. And we know the Department of Interior knows it's too costly to quantify water rights for tribes; we've asked and petitioned that. In regards to an alternative, working with Sites from Cortina, we're looking at some subsistence things that were lost. When the rivers here had water quality issues, we lost freshwater mussels that were historically consumed, that were part of our historical food. Also our fishing rights—we have lost access to a lot of those waterways because of private land, so those things need to be looked at. I believe that's mostly what I remember.

Buchholz [writing on flipchart] asked if there was something else they would like recorded specifically.

Flores: I think in regards to the loss, we were looking at sites of using the stowaways to create artificial habitat for some of the freshwater mussels. Plus, the only place they are found are in the Lost River; I believe that one other place, so that we can actually transplant, so that would help with endangered species, since they are only in one area and they used to be plentiful here. That would help in offsetting some of the environmental impacts. Also, we have a lot of cultural sites within the footprint of the Sites Reservoir, and some of our oldest sites in terms of our history, and we need to look at the mitigation of those, and that's going to take a concerted effort with Taskana, Colusa, Rumsey, and Cortina, in regards to Sites Reservoir.

Buchholz: So with all five of the tribes.

Flores: Yes, and Round Valley possibly has some ties, but we have not heard at this time, but they are notified.

Buchholz: I also wanted to capture the concept of raising Shasta associated with those issues up there, the issues of the sites. Am I capturing the theme of spiritual sites?

Flores: They're cultural sites where traditional practices still occur.

Leslie Lohse from the Paskenta Band of Nomlaki Indians: A couple of things we've talked about is, there is offered in the CALFED draft when they had their programmatic EIS/EIR; they talked about mitigating strategies. One of the things we have a concern for is: Are you going to be looking at, as you're identifying things, mitigating strategies for tribes for the consideration of them when you're talking about water supply, how that's going to impact them when you increase water supply? By having this storage facility, how are you going to come back and mitigate that with tribes and the impact it's going to have on them? And as water users increase, because there's always going to be increase, how are tribes going to be addressed with that issue? In regard to water conservation, as you ask us to conserve, can we participate possibly in the water user efficiency parts of this? How then are we going to be compensated, how is that going to be mitigated with the tribes, in order to...we conserve, we give something up, then what do we get? Include that type of consideration in the tribes, and those are some of the concerns we have, that that kind of language and approach as you're looking at all these things, what is left for the tribes to come back and mitigate those things? Because first of all, on one hand, as Kesner said, we don't have quantified water rights, but we do know that we have the agreements in regard to preserving and protecting our water rights. We have that language in place, but now we need this to match and coincide, so that we can go on. I have a couple of questions, though, possibly in regard to, as I look at the structure, you have Shasta Dam, you have the Tehama County Irrigation District, the Glenn County Irrigation District and how the storage is going to facilitate that and is it going to catch possibly storm water. So I guess the mitigating thing is, what happens to the water quality; we need to look at water quality impact. As we raise this area and put this water in storage, what happens in those drought years when we don't have any runoff, where are we going to get water to replenish that so we maintain the water quality, and what impact will that have upon us, because when you're not pulling it out of an offstream site, you're probably going to pump it out of the ground, possibly, up the hill.

Buchholz: So let me capture your comment. So if the storage is down and we don't have any water in the reservoir because it's a dry year, and if the users rely on groundwater, what happens?

Lohse: Yes, and how do we fit into that into protecting our groundwater? Also, and this is from Paskentas, the Bureau of Reclamation, their canals, the Tehama County Colusa Canal comes into our property, they overflow part of it, and we have a resolution MOU with them in regard to when they can dump it. Corning Water District will participate in that. That is included, if I understand it correctly, water will be diverted out of that canal up this way, perhaps? It's used as possible, or is it going to be taken out? Where is the line going to go basically?

Buchholz: That's part of the process right now, we don't know that answer, because we're just starting this part of the study, and so right now we haven't even developed the whole range of alternatives, which is one of the reasons why we're here tonight, to understand from you things that we should put in the alternatives, and if we may have alternatives you like or not like, what we need to look at so that we know the effects are, to identify the effects on you. So the answer is we don't know, and the question, as I'm trying to capture it was the concern for water quality or also for surface waters.

Lohse: For both, because there are surface waters that we have that will be impacted because they are being diverted elsewhere. Those are some of my concerns; I'll try and think of something later. Thank you.

Flores: Leslie brought up a good point. With the water level dropping in drought years, those cultural sites will then be exposed. With our history of Lake Shasta, every time the water level drops, we have people digging in areas and taking out artifacts and so forth. We would have to look at that, the mitigation for drought years and talk about what the alternatives might be for those would uncover our people, and what are the estimated levels for each year, where that would be, and what would be exposed, and think of the alternative. Reservoirs have flow and turbulence and they cause degradation in the lower levels, and those things haven't been addressed in the past episodes of building storage areas.

Buchholz: Effects of erosion on exposure to cultural sites due to turbulence and changing water levels and exposure to cultural sites.

Kesner: The other thing with tribes, quantity and water rights issues--our tribes should be able to tap into those canals to access water as part of the mitigation, because the tribal lands, with changes in conveyances of water rights along river bodies now with CALFED, are losing access to flow which is going to change their water uses and there needs to be some compensation that can be worked out with each tribe.

John Hancock: I represent the Upper Lake Pomo Reservation and I'd like to read something that was prepared by HERS (Haskell Environmental Research Studies Center). I won't read the whole thing, but I'll provide you a copy.

Buchholz: Specific things are: Establish government-to-government relations, importance of considering tribal water rights and protection of cultural resources.

Ken Swearingen (Cortina Indian Rancheria): Our reservation lies on Stony Creek, which runs into Black Butte Lake and then into Sacramento. What would happen to the waters there upstream of Black Butte? We have many cultural uses by Stony Ford. Cultural practices with a round house that ties to the river, shared by numerous tribes who, during cultural times, come from other round houses throughout the valley. We have the oldest round house in California.

Leslie Lohse: I would ask also that consideration. There are certain expectations by stakeholders that get into an assessment-type forum. I would ask that you take into consideration that tribes are not going to be assessed. I am a part of the Bay-Delta Public Advisory Committee, on the environmental justice side, so some of the message I'm trying to make clear about the relationship between the tribes and the federal government. I don't know that everyone is clear, because I've run into several agency people who aren't clear about it, and those are some of the things, I don't know how you can build that into it, or address it, but as we are listed as the beneficiary, our relationship started with the federal government prior to there being a federal government. It takes it out of the realm of the public actually, in that sense, because there is a special relationship. I think that needs to be considered as you're looking at the mitigating thing, and building in those areas for us to have that opening to work on a government to government basis, be working in. Before there was a U. S. government, there was our government, and I believe the substantiation is that you don't strike treaties with special interest groups and a low income group; you strike it with another nation, another government. And hopefully you will build some language into that that will preserve that and make that clear, so hopefully we aren't looked at as an adversary to any other water user, but as a special water interest and work within the bounds of CALFED. But there is a different level that we're at in our relationship.

John Hancock: For the last 5-6 years in dealing with CALFED and other agencies, I've found out that other states have this government-to-government sovereign relationship with the federal government. Maybe this gets them the deals; California Indians have been left out for some reason. And that's probably the biggest bone of contention you have, that you don't recognize them at the level like Kesner said, not as local governments.

Lohse: I have a question of the USBR Representative. Apparently there was a feasibility study done in 1991. It wasn't completely put through, but is there any way of locating those findings so we can look at them?

Donna Garcia: We actually have a copy of the report and we can get you one. [Kesner Flores requested a copy, also.]

Buchholz: There's been a lot of studies in this area, and we're starting over looking at the scoping, looking at the alternatives considering stakeholders uses, not forgetting what's been done in the past.

Lohse: I thought it might be valuable for us to see what has occurred. In regard to the CALFED, I'm not clear on the state code in regard to dealing with the tribes.

Buchholz: I think we've captured the concept that we need to get something established and I'm not sure we have the answer tonight. We're looking at the environmental document as a joint document between the federal and state governments. In general that means that both sets of codes will have to be dealt with, and yes, you're right, this is an overlapping situation.

Flores: The relationship with the federal government needs to be defined, because that reflects mitigation measures and environmental questions that need to be answered. The tribes know the answer; we're waiting for the realization and the enforcement because the gorilla in the closet for tribes is the federal government. This project cannot be done without congressional approval.

John Hancock: Before the signing of the CALFED ROD, some of us were told by certain people, and I don't want to mention names, that there are people here who know how to deal with Native Americans because they brought them in from Arizona and Colorado. We know that those tribes got dealt with in what I call a fair way. Wherever those guys went to, I'd like to know, because they were supposed to come out to the tribes and talk to us and seeing what our issues were based upon their experience in Arizona and Colorado. We haven't seen them. This was a combination of federal departments.

Buchholz: So there's basically a continued need for federal representatives to work with the tribes, at the tribes.

Flores: There's proprietary issues in regards to cultural practices and subsistence areas that might not be shared even amongst tribes because the different practices and areas sometimes are held sacred to those individuals carrying out those cultural practices, whether it be basket weaving or gathering for round houses, so with that there needs to be a provision for things that cannot be FOIAed (as in Freedom of Information Act), or confidential to the tribe for those people who practice those practices. Because of the recent court decisions, it might hinder the conclusion of this EIS, because those things need to be in place before information can be shared. We want to continue having outreach and tribal workshops. As we've said before, tribes do not speak in public forums because that's truly not the relationship.

Buchholz: Any other formal comments we'd like to make part of the record? At this time we'd like to close this part of the scoping meeting. We will be preparing, when we receive all the comments after February 8, we will be looking through those and organizing them so that we can use those to make sure we're addressing those issues in the environmental document.

We will be preparing a scoping report, with all the scoping comments; we'll be including things such as the letters in that scoping document. And we'll also be looking at that and that will also be used as a roadmap and as a guide for completing the environmental documentation, so that when we get to the end, we want to go back and make sure that those things were addressed the way we talked about them in the scoping report. With this, we'd like to close the formal part of the scoping meeting. If you have any other comments, we're not necessarily going to record for the scoping process, and we don't have a lot of answers; we're just starting.

\*\*\*